

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A
JUDGE, NO. 01-244
CHARLES W. COPE**

CASE NO.: SC01-2670

**MOTION TO SUPPRESS AND EXCLUDE ALL EVIDENCE
PERTAINING TO THE IDENTIFICATION OF JUDGE COPE AS THE
INDIVIDUAL OUTSIDE OF ROOM 306 OF THE NORMANDY
INN IN THE EARLY MORNING HOURS OF APRIL 5, 2001**

The Honorable Charles W. Cope, through his undersigned counsel, moves this Commission to suppress the tainted identification of Judge Cope as the individual outside the door of room 306 of the Normandy Inn in the early morning hours of April 5, 2001 that was made by and which will be made by the alleged “victim” in this case. In support thereof states the following:

Pertinent Facts:

1. The Woman has testified in these proceedings that she voluntarily went for a walk with Judge Cope on the beach in the early morning hours of April 4, 2001. (L. Jeanes Dep. p. 74).
2. The Woman further testified that the two talked on the beach for approximately forty-five minutes. (p. 101). While the two were on the beach that Judge Cope attempted on three occasions to kiss her by gently cupping her face and leaning towards her. (L. Jeanes Dep. p. 118). On each occasions the Woman turned her head and Judge Cope’s lips never touched hers. (p. 117).

She admits that she never told Judge Cope that she did not want to be kissed but only inquired as to why he would desire to

kiss her. (L. Jeanes Dep. p. 118). At no time did Judge Cope act aggressively, or threaten her in any way. (p. 118, 119).

3. Thereafter, the Woman ran from the beach to her hotel room. Judge Cope never chased her, nor did he even call out to her. (p. 119).

4. Upon arriving to her room she was upset and told her mother that, “If I would have let him he would have raped me.”¹ The Woman now explains that she knows that such assertion does not make sense, acknowledging that if she would have let him, it would not have been rape. She further explains that she was merely referring to her belief that Judge Cope had motives ulterior than just consoling her, i.e., that he wanted to kiss her. (p. 110–111). The Woman also irrationally characterized Judge Cope as a psycho and/or crazy. (p. 114).

5. The Woman also insisted on leaving Carmel-by-the-Sea in the morning because of her belief that Judge Cope had ulterior motives. The Woman admits that she was intoxicated on that evening.

6. The next morning the mother did not want to leave because she did not perceive the matter as serious and the daughter did not explain what happened. The Woman is “angry” with her Mother to this day because the mother did not want to leave Carmel-by the Sea. (p. 108)

7. That night the Woman and her mother went to at least two different establishments where they consumed alcoholic beverages. The Woman

¹ This entire scenario is conclusively proven to be false. The mother denies the daughter even made this statement and in fact never let the daughter in to the room following the supposed flight from the beach. The daughter in fact went with Cope from the beach to his hotel room.

admits to ordering five alcoholic beverages for herself and consuming at least four of such. The Woman contends that she did not completely consume the fifth drink that she ordered, rather, she left it unfinished when she left the second establishment. (L. Jeanes Dep. p. 84, 93-94). The Woman further testified that she did not finish the fifth alcoholic beverage because was too “upset.” (p. 84).

8. Just before the women retired for the evening, Judge Cope walked past the Normandy Inn and observed the mother smoking a cigarette on the stairs of the hotel. He greeted her and she angrily yelled words to the effect “you’re the one.” The mother immediately reported to her daughter she though she observed Judge Cope outside the hotel and that he “turned and smiled.”

9. The Woman contends that later that night while she was asleep in her hotel room she “heard a key turn in the door” and “banging with the chain,” three times and “knew immediately [in her mind] that it had to be the guy [Judge Cope]” (District Attorney interview, June 15, 2001, p. 12.; L. Jeanes Dep. p. 128). She asserts that she, thereafter, looked out the peephole of the slightly ajar door. She further admits that the view was “blurry” because the door was ajar (D.A. interview p. 13) but that upon looking out she “confirmed in [her] mind” that it was Judge Cope outside the door. (L. Jeanes Dep. p. 140). The figure she allegedly saw through the “blurry” peephole of the ajar door had a round face and big ears. (p. 150-51). She could not describe his features to the police. (p. 150). After supposedly recognizing Judge Cope immediately, the daughter helped the mother call the police. The record of that call establishes that the daughter did

not report the identity of the man at the door and further did not know who he was.

10. The Woman testified that when the police officer arrived she told him (Officer Nash) that “it was the guy from last night,” referring to Judge Cope. In contrast, Officer Nash testified that the Woman asked him, after he searched the area, if he had found the man from last night in his search, again referring to Judge Cope. (Nash Dep. p. 33). Officer Nash was the same officer who the night before had stopped and questioned the Woman, her mother and Judge Cope, when Judge Cope was attempting to assist the two women in finding their room key. Such events regarding the lost key occurred prior to Judge Cope and the Woman walking on the beach. (L. Jeanes Dep. p. 151). There was no other description given to the police other than such statement or question of the Woman concerning “the man from last night.” (L. Jeanes Dep. p. 151).

11. In response to the Woman’s inquiry as to whether in his search Officer Nash found the man from last night, Officer Nash then radioed into dispatch, in the Woman’s presence, that the perpetrator was Judge Cope, and for Judge Cope to be detained. (Nash depo. P. 90-91).

12. When Corporal Nyunt detained Judge Cope, Officer Nash and the Woman traveled in route to the location that Judge Cope was being detained so as to confirm that the individual detained was Judge Cope. (Nash Depo. P. 93 “Corporal Nyunt had no idea who Judge Cope was, so he was unable to verify at the time of the stop his identity. That’s why I had to confirm it.”)). Corporal

Nyunt had been advised by Officer Nash in his earlier radio transmission that Judge Cope resembled Captain Kennedy from Pacific Grove P.D. Such description was based on Officer Nash's own recollection of what Judge Cope looked like from Officer Nash's encounter with Judge Cope and the two women the previous night (Nash Dep. p. 98).

13. On the way to confirm that Judge Cope was the person detained by Corporal Nyunt, the Woman understood that Corporal Nyunt had been looking for Judge Cope. The Woman further knew that Corporal Nyunt had detained an individual believed to be Judge Cope. (Nash Dep. p. 94).

14. Upon arrival to where the daughter believed Judge Cope was detained, Judge Cope was standing in front of Corporal Nyunt's vehicle with the headlights shining on him and Corporal Nyunt standing by him. Officer Nash then further illuminated Judge Cope's face with a flashlight for confirmation by the Woman that the man was in fact Judge Cope. (Nash Dep. p. 95-96).

15. The Woman who had consumed at least four alcoholic beverages earlier in the evening, who knew in her mind that the person at the door was Judge Cope before she ever got to the door, who witnessed a figure with a round face and big ears through a blurry peephole, who heard Officer Nash request Corporal Nyunt to detain Judge Cope, who knew that Corporal Nyunt had detained an individual believed to be Judge Cope and who upon arriving on the scene saw only one individual detained by Corporal Nyunt, identified Judge Cope from a distance of 20 to 25 feet by excitedly stating "that's him." (Nash Dep. p. 99).

MEMORANDUM OF LAW

The United States Supreme Court in Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967 (1967) established the due process standard by which police identification procedures are to be measured. A violation of due process occurs when, under “The totality of the circumstances,” a confrontations procedure is “unnecessarily suggestive and conducive to irreparable mistaken identification.” Stovall v. Denno, 388 U.S. 293, 301 (1967). See, Coleman v. Alabama, 399 U.S. 1 (1970); Foster v. California, 394 U.S. 440 (1969); Manson v. Brathwaite, 432 U.S. 98 (1977); Allen v. Estelle, 568 F.2d 1108, 1111, n. 5 (5th Cir. 1978); Butler v. State, 544 So.2d 1115 (Fla. 3d DCA 1989).

In Butler the court explained the courts should determine claims of due process violations resulting from out of court identification by application of the following two step analysis:

Did the police employ an unnecessarily suggestive procedure in obtaining an out of court identification; . . . if so, considering all of the circumstances, did the suggestive procedure give rise to a substantial likelihood of irreparable misidentification.

544 So.2d at 1116. The United States Supreme Court in Stovall pointed out:

[t]he practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned.

388 U.S. at 302, 87 S.Ct. at 1972. The court in Sanchell v. Parratt, 530 F.2d 286, 294 (8th Cir. 1975), warned that “showing only a single suspect to the witness is ‘the most suggestive and, therefore, the most objectionable method of pretrial identification.’” (quoting United States v. Dailey 524 F.2d 911, 914 (8th Cir. 1976). The court in United States v. Jones, 517 F.2d 176, 179 (D.C. Cir. 1975), has similarly recognized that “confrontations in which a single suspect is

viewed in the custody of the police are highly suggestive.” In Butler the court determined that a due process violation had occurred as a result of a pre-trial identification. In that case, the court first held that the photo line up employed by the state was unnecessarily suggestive. The court then went on to hold that the circumstances of that case evidenced a substantial likelihood of irreparable misidentification warranting reversal. 544 So.2d 1115. In so holding, the court reasoned that “the circumstances surrounding the shooting raise substantial doubt as to the witnesses’ ability to correctly identify the perpetrator.”

In the instant case, there is no doubt that the identification procedures were grossly and impermissibly suggestive: Officer Nash in the Woman’s presence radioed in that the perpetrator of the alleged crime was Judge Cope and provided his hotel room number and asked that Judge Cope be located and detained. Corporal Nyunt thereafter notified Officer Nash that he had detained Judge Cope. Officer Nash took the Woman to Corporal Nyunt’s location for the purpose of identifying the man detained as Judge Cope. Upon arriving at the scene Judge Cope was the only individual detained by Corporal Nyunt. Judge Cope was standing in the headlights of Corporal Nyunt’s car and Officer Nash shone his flashlight on Judge Cope so as to facilitate the Woman’s identification of Judge Cope.

In addition to the identification procedure being impermissibly suggestive, the circumstances surrounding the alleged crime, like in Butler, raise substantial doubts as to the Woman’s ability to identify the individual who allegedly attempted to open the door of the Woman’s hotel room. As discussed above, the Woman had consumed at least four alcoholic beverages earlier in the evening and was still admittedly, albeit irrationally upset with Judge Cope from the night before for his alleged ulterior motives. In addition the Woman had been awakened from her sleep, was in a state

of fright, and admits that she “knew” it was Judge Cope without ever seeing the figure at the door. The Woman also states that despite the fact that the person at the door was allegedly attempting to break through the chain on the door, that she went over to the ajar door and looked through the “blurry” peephole to see an individual who had his back to the door. The Woman further attests that the individual at the door heard her at the door and turned around and at that time she saw a round face and big ears and “confirmed in [her] mind” that it was Judge Cope. Clearly, if the Woman was frightened and believed the person at the door was attempting to break into her hotel room as she attests -- but she nonetheless approached the ajar door and observed the individual outside hear her and turn around towards the door -- then that Woman under such circumstances would not have continued to look into the “blurry” peephole of the ajar door after the individual started to turn around and could not make any type of credible identification of the individual at the door. In addition, the door had a deadbolt easily operated from inside the room without a key. Moreover, the Woman told the D. A. Investigator that she didn’t know whether to close the door when she saw the man standing against the far railing with his back to the door. Furthermore, the Woman admits that she had already formed the belief in her mind prior to ever approaching the door that the person at the door was Judge Cope. Clearly, given the foregoing it is a gross understatement to say that there is substantial doubt as to the Woman’s ability to correctly identify the individual at the door. Accordingly, there certainly exists a substantial likelihood of irreparable misidentification mandating suppression of the Woman’s tainted identification of Judge Cope as the individual at the door.

WHEREFORE, Judge Cope respectfully requests this Commission to suppress and exclude all evidence of the tainted identification of Judge Cope as the individual outside the door

of room 306 of the Normandy Inn in the early morning hours of April 5, 2001 that was made by
and/or will be made by the alleged “victim” in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile and U.S. Mail to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Lardner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, this _____ day of June, 2002.

ROBERT W. MERKLE, ESQ.